

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

**GEORGE STEWART, on behalf of
himself and others similarly situated,,**

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§

§

Plaintiffs,

§

§

v.

§ Civil Action No. 5:23-cv-00007-H

**TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER, et al., ,**

§

§

§

Defendants.

**UNOPPOSED DEFENDANTS' MOTION TO REOPEN CASE TO EXTEND DATE TO
RESPOND**

Defendants The University of Texas at Austin, UT Austin President Jay Hartzell, Dell Medical School Dean Claudia Lucchinetti, Dell Medical School Associate Dean of Student Affairs Steve Smith, and Dell Medical School Director of Admissions Joel Daboub (“UT Austin Defendants”) move pursuant to Federal Rules of Civil Procedure 6(b)(1)(A), and 7(b)(1), to (1) reopen the case for the purpose of setting a new response date for UT Austin Defendants, and (2) set the response date for on or before September 12, 2023. Plaintiff, George Stewart, is unopposed to this motion, and the Court should grant the requested relief.

FACTUAL BACKGROUND

Plaintiff’s suit alleges that the defendant medical schools unlawfully consider race and sex in their admissions processes. Compl. (Dkt. #1) at 8. Among the defendants are five medical schools that are component institutions of the University of Texas System and 19 various officials affiliated with the UT medical schools (“UT Defendants”), including UT Austin Defendants. *Id.* at 5-8. Plaintiff has also sued Texas Tech University Health Sciences Center (TTUHSC), and five TTUHSC officials. *Id.* at 3-4.

So far, UT Austin Defendants are the only defendants who have been served. Accordingly, they are the only defendants with a response date, which is currently set for July 11, 2023. Order (Dkt. #14) at 1 (Mar. 2, 2023); Order (Dkt. #20) (May 5, 2023). On June 15, 2013, the Court issued an Administrative Closure Order, closing the case “until defendants file a responsive pleading,” but allowing the Court to reopen to “extend the answer deadline.” Closure Order (Dkt. #21) (June 15, 2023).

Previously, one of the reasons for extension was that defendants were waiting for the Attorney General’s approval to obtain representation, which has recently been granted for counsel named below to represent UT Austin Defendants. Now, counsel for UT Austin Defendants propose that the Court set a new response date on or before September 12, 2023 to answer, move or otherwise respond to the complaint.

ARGUMENT AND AUTHORITIES

Pursuant to the Court’s June Closure Order, defendants ask the Court to “reopen the case earlier” so that the parties may set a response date for UT Austin Defendants that could serve as a common response date for all defendants if they are served. Closure Order (Dkt. #21) (June 15, 2023). “An application under Rule 6(b)(1) normally will be granted in the absence of bad faith or prejudice to the adverse party.” 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §1165, at 475 (2d ed. 1987). Good cause for the requested extension exists because (1) defendants only recently received approval to secure counsel, (2) no defendants other than UT Austin and its officials have been served, (3) Plaintiff will not be prejudiced by the extension, and (4) the parties would benefit from additional time to carefully review the new opinion issued by the United States Supreme Court on June 29, 2023.

As noted, Plaintiff does not oppose this motion. Because no other defendants have been served, the requested response date would allow Plaintiff additional time to serve other defendants

if he intends to pursue this lawsuit against all the named defendants. The current motion is also consistent with parties' past practice of agreeing "to additional extensions of the deadline if the defendants or their counsel want to wait for the pending Supreme Court rulings" in *Students for Fair Admissions v. President & Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina, et al.*, (Consolidated at No. 20-1199). Pl.'s Resp. to Defs.' Mot. to Abate (Dkt. #17) at 1 (Apr. 9, 2023). Because the Supreme Court of the United States only issued an opinion in these cases on June 29, 2023, the requested response date will provide UT Austin Defendants and newly retained counsel time to carefully review the Court's opinion and assess claims and defenses.

CLAIM FOR RELIEF

Without waiving any objections or defenses, and upon reopening of this case from its Administrative Closure for the sole purpose of an extension, UT Austin Defendants move to set the date to plead, move, or otherwise respond to the complaint for on or before September 12, 2023.

Dated: June 30, 2023.

Respectfully submitted,

/s/ Layne E. Kruse
Layne E. Kruse
State Bar No. 11742550
layne.kruse@nortonrosefulbright.com
Shauna Johnson Clark
State Bar No. 00790977
shauna.clark@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
(713) 651-5151 – Tel
(713) 651-5246 – Fax

*Counsel for Defendants The University of
Texas at Austin, Jay Hartzell, Claudia
Lucchinetti, Steve Smith, and Joel Daboub*

CERTIFICATE OF CONFERENCE

I certify that on June 29, 2023, I sent Plaintiff's counsel a draft of this motion, and I confirmed by email with Plaintiff's counsel Jonathan Mitchell that he is unopposed to this motion.

/s/ Layne E. Kruse
Layne E. Kruse

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2023, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Layne E. Kruse

Layne E. Kruse